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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LFP IP, LLC,

Plaintiff,

vs.

LEE KEITH BRETT,

Defendant.

Case No.: 2:16-cv-00166-FMO-RAO

**PLAINTIFF'S *EX PARTE*
APPLICATION FOR RELIEF RE:
FURTHER MEET AND CONFER
AND/OR JOINT FILING
REQUIREMENTS**

Final Status Conference: July 7, 2017

First Day of Trial: July 25, 2017

1 **1. Defendant is Representing Himself, Without Counsel.¹**

2 Plaintiff LFP IP, LLC (“Plaintiff”) brings the instant *ex parte* application
3
4 seeking to be excused from any further meet and confer requirements, or joint
5 filing requirements with Defendant Lee K. Brett (“Defendant”).

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7 Defendant is representing himself in this action, in *pro per*, which has made
8 the process extraordinarily difficult and problematic. Not only has it made the
9 process time consuming, but Plaintiff’s counsel has been subjected to various
10 threats and personal attacks.

11
12 Simply put, when Plaintiff’s counsel disagrees with something or Defendant
13 does not understand something, Defendant Brett “goes on the offensive” and
14 engages in harassing conduct.

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16 **2. The Meet and Confer Process has Been Problematic.**

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18 As set forth in the Supplemental Declaration filed in connection with the
19 Summary Judgment Motion(s) (Docket No. 47-1), Defendant Brett previously
20 engaged in troublesome conduct.² Such conduct included not only yelling on the
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24 ¹ Defendant Brett has been informed that Plaintiff’s counsel will be filing this ex
25 parte application, seeking relief from further meet and confer requirements and/or
26 further joint filing requirements. Pursuant to a voicemail message left by
27 Defendant Brett, Plaintiff’s counsel understands that Defendant will oppose this
28 application.

² For example, Defendant would yell and curse on the phone, especially if there
was any type of disagreement over an issue. Defendant would make veiled threats

1 phone, but calls to non-lawyers in Plaintiff's counsel's office, and harassing
2 emails.

3 **3. Defendant's Inappropriate Conduct has escalated.**

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5 Unfortunately, Defendant's inappropriate conduct has escalated and has
6 resulted in the Defendant engaging not only in "name calling" but making threats
7 to bring a Rule 11 motion, in apparent hopes of gaining some type of advantage in
8 the litigation or settlement discussions.³

9
10 Recently, on June 9, 2017 the day after an in person meeting with Plaintiff's
11 trial counsel, Mark Hoffman, Defendant Brett called and stated that he was in the
12 process of retaining counsel. Among other things, Defendant provided a specific
13 name of an attorney at a specific law firm. (Please see the accompany Declaration
14 of Mark S. Hoffman ("Hoffman Decl."), ¶ 3). Defendant also stated that he would
15 be bringing an *ex parte* application to continue the trial dates on that Friday, or at
16 the latest on Monday (June 12, 2017), if Plaintiff's counsel did not agree to the
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22 in emails such as "*Keep watching the news, you will see your name and firm*
23 *exposed.*"

24 ³ The threatened Rule 11 motion appears to be based, at least in part, on a
25 statement made in the Joint Motion for Summary Judgment, where Plaintiff
26 asserted that Defendant did not plead his defense concerning his claim that the
27 HUSTLER® mark is generic. While he did raise the argument during the meet
28 and confer process, Defendant does not understand or appreciate the fact that he
did not plead the defense. Defendant claims that Plaintiff's counsel was acting
inappropriately when pointing out the fact that this defense was not pled.

1 continuance. Defendant stated that he would be filing the request/motion to
2 continue the trial, whether Plaintiff agreed to or not. Hoffman Decl. ¶ 4.
3

4 Later that same day, Defendant then emailed a proposed revised schedule
5 relating to pretrial deadlines and a new trial date, which appeared to have been
6 prepared by an attorney. Plaintiff's counsel promptly responded on that Friday.
7 See Hoffman Decl. ¶ 5. However, Defendant Brett did not respond to several
8 follow up emails and did not provide a proposed stipulation on that day or on
9 Monday, June 12.
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13 Thereafter, Defendant did not inform Plaintiff's counsel that he was seeking
14 to engage counsel and continue the trial dates, until June 14, 2017, a few days
15 before the Pretrial Exhibit Stipulation and other pretrial documents were due.
16 Hoffman Decl. ¶ 6.
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18

19 After informing Defendant that Plaintiff would be objecting to Defendant's
20 proposed motions in limine, Defendant became upset and sent various threatening
21 emails to Plaintiff's counsel and legal staff. Plaintiff's counsel did not pick up the
22 phone given Defendant's conduct and the baseless accusations, and decided to
23 communicate only via email.
24
25

26 Among other things, Defendant Brett stated in one of his June 14, 2017
27 emails: "*I am not interested in your legal argument as a reply... you have not been*
28

1 *truthful in your summary judgment filings in regards to fame... I frankly am sick*
 2 *of dealing with you... I will be filing the motions in limine and I will be drafting up*
 3 *my complaints and informing the courts of your false, deceptive and misleading*
 4 *actions.” (Exhibit A to the Brown Decl.) [Redacted to eliminate statements*
 5 *concerning settlement discussions].*

8 Further, in one of Defendant Brett’s June 15, 2017 emails: *“You really are*
 9 *very immature... you are really are acting like a big baby... suck it up and move*
 10 *forward... either grow up and answer your phone or quit this case. If you can’t*
 11 *handle it now, you ain’t gonna handle it in the next few weeks when the media are*
 12 *at the court house for the flynt circus show.” (Exhibit B to the Brown Decl.)*

15 Further, in recent emails Defendant also has threatened to bring settlement
 16 communications to the court’s attention, in apparent hopes that somehow it will
 17 assist him in this litigation.

19 Last night, Defendant claimed that plaintiff’s proposed jury instructions
 20 were part of “deceptive practices” he believes plaintiff’s counsel is engaging in.

22 Unfortunately, this has been the theme of the meet and confer process: if
 23 Defendant does not understand an issue or if Plaintiff counsel disagrees with
 24 Defendant, Defendant Brett believes that he is being taken advantage of and then
 25 lashes out. Instead of simply objecting or responding with a proposal himself,
 26 Defendant claims that Plaintiff’s counsel is lying to him or is engaged in some

1 other nefarious strategy. These types of tactics and accusations have made it
 2 impossible to work in a constructive fashion.
 3

4 **4. Relief Requested:**

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 6 Given the above conduct, it has made it impossible to have a constructive
 7 dialogue concerning jury instructions or any of the other items that are normally
 8 sorted through amongst counsel. Given that Defendant Brett has resorted to this
 9 type of conduct, Plaintiff's counsel seeks to be excused from engaging in additional
 10 meet and confer activities and/or additional joint filing requirements.
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14 Without the assistance of the Court, which may include a magistrate Judge's
 15 assistance to help sort through the various issues, Plaintiff's counsel is concerned
 16 that a trial that should only last three (3) days, could be doubled or tripled given
 17 Defendant's actions and the inability to reach common grounds on things like
 18 exhibits and jury instructions.
 19
 20
 21

22 Dated: June 20, 2017

23 MARK S. HOFFMAN, A
 24 PROFESSIONAL CORPORATION

25 LIPSITZ GREEN SCIME CAMBRIA LLP

26 By: /s/ Jonathan W. Brown

27 Jonathan W. Brown, Esq.

28 Attorneys for Plaintiff LFP IP, LLC